Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	GN Docket No. 25-133
In Re: Delete, Delete, Delete	)	

COMMENTS OF REASON FOUNDATION

April 11, 2025

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Introduction

On behalf of Reason Foundation, we respectfully submit these comments in response to the Federal Communications Commission's (FCC's) request for comment in the proceeding, *In Re: Delete, Delete, Delete*, published March 12, 2025.[1]

Reason Foundation is a national 501(c)(3) public policy research and education organization with expertise across a range of policy areas, including technology and communications policy.[2]

Our comments address the following topics:

- Universal Service Fund inefficiencies and reform;
- The application of Title II to net neutrality and Section 230; and
- Digital discrimination provisions of the Infrastructure Investment and Jobs Act.

Universal Service Fund Inefficiencies and Reform

The Universal Service Fund (USF) was created to subsidize voice services for rural, low-income, and underserved areas, funded by a tax on voice services. However, in 2011, the FCC expanded the scope of "universal service" to include broadband data and created programs such as the Connect America Fund and Mobility Fund to help expand broadband access.[3] The Commission declared broadband data as an essential utility for communication, education, healthcare, and economic participation. The FCC redefined "voice telephony services" to include Voice over Internet Protocol (VoIP) and required providers offering broadband to meet specific criteria to qualify for USF support.[4] But all of this was still funded only by taxing voice services, as originally authorized by Congress.

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1. In Re: Delete, Delete, Delete, *Notice and Request for Comments*, Federal Communications Commission, GN Docket No. 25-133 (March 12, 2025).
2. *See* "About Reason Foundation," Reason Foundation website, https://reason.org/about-reason-foundation/ (accessed April 9, 2025).
3. Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support, *Final Rule*, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208; FCC 11-161, 76 Fed. Reg. 73,830 (November 11, 2011).
4. "Voice Over Internet Protocol (VoIP)," Federal Communications Commission, https://www.fcc.gov/general/voice-over-internet-protocol-voip (accessed April 9, 2025).

These changes introduced several inefficiencies that have made the program less effective. First, adding broadband services significantly increased the program's costs.[5] The USF's annual budget now exceeds $8 billion, with much of this allocated to broadband deployment subsidies under the High-Cost Program and E-Rate for schools and libraries.[6] The "contribution fee" rate paid by telecom companies has risen dramatically, from 3% in 1998 to 36.6% in second quarter of 2025.[7] This dramatic increase has placed an undue financial burden on both providers and consumers, particularly those with lower incomes.[8] Moreover, recent proposals to expand the USF revenue base to include revenue from broadband providers would increase household broadband bills by $5.25 to $17.96 per month,[9] creating further financial strain for lower-income consumers who can ill afford it.

At the same time, telecommunications companies that provide voice services internationally are unfairly required to pay USF contributions for revenue earned outside the United States. Under the Limited International Revenue Exemption (LIRE) formula, companies with domestic interstate revenues of 12% or less of their total revenues pay the USF tax only on their domestic interstate revenue.[10] But any company who puts serving America first with more than 12% of its total revenue from domestic interstate services must pay the current 36.6% fee on its total revenue—a huge tax cliff from 4.4% of total revenue to 36.6% of total revenue.

Administrative cost overruns have also become a significant problem within the USF, with administrative expenses ballooning significantly over time. In 2000, administrative costs were $43 million, but by 2022, they had surged to nearly $330 million—almost as much as the entire Rural Health Care Program budget ($500 million) and more than half of the Lifeline Program budget ($610 million).[11] The Universal Service Administrative Company (USAC), which manages the fund, has faced criticism for failing to economize on overhead

5. Nate Scherer, "Universal Service Fund: The Bad, Good, and Optimal," American Consumer Institute, June 2024, https://www.theamericanconsumer.org/wp-content/uploads/2024/06/Universal-Service-Fund-The-Bad-Good-and-Optimal.pdf (accessed April 9, 2025).
6. Ibid.
7. Ibid. *See also* Proposed Second Quarter 2025 Universal Service Contribution Factor, *Public Notice*, Federal Communications Commission, CC Docket No. 96-45 (March 13, 2025).
8. Nate Scherer, "Universal Service Fund: The Bad, Good, and Optimal."
9. Letter from Chairwoman Jessica Rosenworcel, Federal Communications Commission, to Senator Ben Ray Luján, January 12, 2024, https://docs.fcc.gov/public/attachments/DOC-400113A1.pdf (accessed April 9, 2025).
10. "LIRE," Universal Service Administrative Company, https://www.usac.org/service-providers/making-payments/invoices/support-mechanism-charges/lire/ (accessed April 9, 2025).
11. Scott Wallsten and Gregory L. Rosston, "How to Fix the Universal Service Fund," Technology Policy Institute, May 10, 2023, https://techpolicyinstitute.org/publications/broadband/digital-divide/how-to-fix-the-universal-service-fund/ (accessed April 9, 2025).

costs. The FCC mandates a budget floor of $4.5 billion annually for high-cost areas, requiring collection even if actual needs are lower.[12] This rigid structure discourages cost optimization and diverts funds from more pressing priorities. The growing number of contractors receiving substantial fees from USAC further highlights the lack of cost discipline. These unchecked administrative expenses divert resources away from the program's intended beneficiaries.

While the E-Rate program is meant to connect schools and libraries, it is riddled with inefficiency, fraud, and wasteful spending, including cases of unused equipment and inflated costs due to non-competitive bidding. Ambiguous rules and delays in funding approvals exacerbate these issues, while "gold plating" leads to unnecessary spending on underutilized technology.[13] Additionally, the lack of performance metrics makes it difficult to assess whether funds are achieving their intended goals.

Similarly, lower-income households spend a larger share of their income on telecommunications services compared to wealthier households, making the fee disproportionately burdensome for them.[14] Higher service costs caused by USF fees can also deter consumers from subscribing to telecommunications services or push them toward non-taxable alternatives such as FaceTime or Zoom. This shift has naturally reduced the taxable base for USF contributions, creating a cycle of rising fees as the FCC struggles to maintain funding levels. Additionally, companies that absorb USF costs instead of passing them onto consumers may scale back investments in network enhancements and new technologies, potentially limiting improvements in consumer access and satisfaction over time.

We suggest the following USF reforms:

- Reverse the 2011 decision that expanded the scope of "universal service," thereby reverting to the original program Congress had enacted and intended.
- Eliminate the USF LIRE tax cliff that penalizes American companies that compete internationally by generalizing the waiver granted to Tata in 2021 to all companies

12. "Program Overview," Universal Service Administrative Company, https://www.usac.org/high-cost/program-overview/ (accessed April 9, 2025).
13. Angele A. Gilroy, "Telecommunications Discounts for Schools and Libraries: The 'E-Rate' Program and Controversies," Congressional Research Service, September 15, 2004, https://www.everycrsreport.com/files/20040915_IB98040_ed79252e5f01635a08fb940fdadf155448c825ff.pdf (accessed April 9, 2025).
14. "Broadband Challenges and Opportunities in Affordable Rental Housing," Pew Charitable Trusts, April 3, 2023, https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2023/04/broadband-challenges-and-opportunities-in-affordable-rental-housing (accessed April 9, 2025).

subject to USF obligations.[15] This would ensure that domestic interstate universal services are funded fairly by USF fees on companies' domestic interstate revenues.
- Budget discipline must be imposed by introducing a cap for USF programs while eliminating counterproductive budget floors. This would encourage efficient spending and align funding with actual needs rather than arbitrary thresholds.
- Independent audits of USAC operations should be conducted to implement stricter cost controls and reduce administrative overhead.
- Embrace improved technologies that now make it possible to serve high-cost areas at lower costs, challenging the need for such subsidies. Today, wireless solutions such as low Earth orbit (LEO) satellite constellations can achieve similar results at lower costs.[16]

Some have proposed expanding the USF tax base by making search engines and social media companies contribute to the fund. Proponents claim that because these companies benefit from publicly funded broadband, they ought to contribute to the fund. However, doing so would harm consumers, business owners, and innovation. It also ignores the reality that the vast majority of broadband infrastructure is entirely privately funded. As noted previously, the high contribution fees imposed on telecom providers divert funds that could have otherwise been invested in innovative technologies to improve service. Casting a wider net would simply distort and depress investment by a larger number of companies. Similarly, imposing new fees on services such as FaceTime or Zoom, if not borne by the companies themselves, would be passed down to consumers, and the burden would be disproportionately borne by low-income consumers.

Title II Interpretation (Net Neutrality, Section 230)

The FCC's 2002 determination that cable broadband providers offering Title I "information services" were not subject to Title II "telecommunications service" common carrier requirements helped foster the wide-ranging Internet ecosystem we experience today. The Supreme Court upheld this classification in 2005 when it ruled in *National Cable & Telecommunications Association v. Brand X Internet Services.*[17] However, the FCC's interpretation evolved significantly with the 2015 *Open Internet Order*, which reclassified

15. Tata Communications (America), Inc., and Tata Communications (Guam), L.L.C Request for Waiver of Section 54.706(a) of the Commission's Rules, *Order*, Federal Communications Commission, WC Docket No. 06-122, DA 21-351 (March 25, 2021).
16. "What is Low Earth Orbit (LEO) satellite internet?" Gogo Inc., https://www.gogoair.com/blog-posts/what-is-low-earth-orbit-leo-satellite-internet (accessed April 9, 2025).
17. National Cable & Telecommunications Association v. Brand X Internet Services, 545 U.S. 967 (2005).

broadband as a Title II telecommunications service to enforce net neutrality rules prohibiting blocking, throttling, and paid prioritization.[18] This reclassification was upheld by the D.C. Circuit Court of Appeals in 2016 in *US Telecom v. FCC*.[19] This rationale for Title II expanded further in 2024 when the FCC reinstated this classification, citing national security, public safety, and privacy concerns as additional justifications alongside net neutrality.[20] The 2024 *Title II Order* emphasized cybersecurity and protection against foreign adversaries, mentioning threats from nations like China and Russia extensively.

This heavy-handed approach to regulating telecommunications services stifles innovation by banning practices such as paid prioritization and zero-rating while reducing consumer choice in competitive broadband markets driven by technologies such as 5G and satellite Internet. Between 2011 and 2015, the mere threat of net neutrality reduced ISP investments by 20–30%, amounting to a $150–200 billion loss in forgone investment.[21] During the enforcement of net neutrality rules from 2015 to 2017, broadband investment fell for the first time outside of a recession period, slowing service delivery to rural areas where broadband access was most needed. Globally, net neutrality rules prevented initiatives like Wikipedia Zero and Free Basics from offering free or reduced-cost internet access to low-income users in countries like Chile and India, as such programs violated rules against traffic discrimination.[22] Net neutrality regulations can unintentionally hinder innovation, investment, and equitable access to internet services.

Recent court rulings have struck down net neutrality regulations, citing the FCC's lack of authority to enforce them. In January 2025, the Sixth Circuit Court of Appeals invalidated the FCC's attempt to reinstate net neutrality rules, which had been repealed by the Commission's *Restoring Internet Freedom Order* of 2017.[23] The Sixth Circuit decision relied on the Supreme Court's ruling in *Loper Bright Enterprises v. Raimondo*, which curtailed agency

18. Protecting and Promoting the Open Internet, *Final Rule*, Federal Communications Commission, GN Docket No. 14-28, 80 Fed. Reg. 19,738 (April 13, 2015).
19. *United States Telecom Assoc. v. FCC*, No. 15-1063 (D.C. Cir. 2016).
20. Safeguarding and Securing the Open Internet; Restoring Internet Freedom, *Final Rule*, Federal Communications Commission, WC Docket Nos. 23-320, 17-108, 89 Fed. Reg. 45,404 (May 22, 2024).
21. George S. Ford, "Net Neutrality, Reclassification and Investment: A Counterfactual Analysis," Phoenix Center for Advanced Legal & Economic Public Policy Studies, April 25, 2017, https://www.phoenix-center.org/perspectives/Perspective17-02Final.pdf (accessed April 9, 2025).
22. Gennie Gebhart, "What U.S. Policy Makers Need to Know About Free Basics," Electronic Frontier Foundation, October, 26, 2016, https://www.eff.org/deeplinks/2016/10/what-us-policy-makers-need-know-about-free-basics (Accessed April 9, 2025).
23. *In re MCP No. 185: FCC In the Matter of Safeguarding and Securing the Open Internet (Ohio Telecom Association et al. v. Federal Communications Commission)*, Nos. 24-7000/3449/3450/3497/ 3504/3507/3508/3510/3511/ 3519/3538 (6th Cir. 2025).

deference in interpreting laws.[24] The court emphasized that any future net neutrality regulations would require clear congressional authorization.

Regarding clear congressional authorization, the debate over Section 230 and how to interpret it should stay within Congress. Section 230, part of the Telecommunications Act of 1996, provides immunity to online platforms for third-party content and allows platforms to moderate content in "good faith."[25] While the FCC has general rulemaking authority to interpret provisions of the Act, its authority over Section 230 specifically has recently been debated. Many legal experts argue that the FCC lacks jurisdiction to enforce or reinterpret Section 230 due to its application to "interactive computer services" rather than telecommunications services.

Earlier this year, Chairman Brendan Carr expressed interest in issuing a reinterpretation of Section 230 to allow platforms that moderate user content with heavy political bias to be held liable for "abusing [their] power."[26] Some specific targets of this reinterpretation, or what Carr has called the "censorship cartel," include Alphabet, Apple, Meta, and Microsoft.[27] However, any attempt by the FCC to reinterpret Section 230 would face heightened scrutiny under *Loper Bright*. While there have been calls for Section 230 to be reformed or sunset, including reclassifying online platforms as common carriers, those decisions must be made by Congress, not the FCC.[28]

While Title II classification is a pathway to heavy FCC regulation, the agency should not push more technology services into its domain. Title I classification for Internet services and Section 230 immunity for online platforms have helped create the vibrant Internet ecosystem the United States enjoys today. Undoing it now, while artificial intelligence and other breakthrough innovations are emerging and platform competition is rising to new levels, would risk not only the past innovations benefiting Americans every day, but also the innovations from which we could benefit in the near future.

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24. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
25. Valerie C. Brannon and Eric N. Holmes, "Section 230: An Overview," Congressional Research Service, January 4, 2024, https://www.congress.gov/crs-product/R46751.
26. Joe Lancaster, "FCC Chair Brendan Carr Wants More Control Over Social Media," Reason.com, February 28, 2025, https://reason.com/2025/02/28/fcc-chair-brendan-carr-wants-more-control-over-social-media/ (accessed April 9, 2025).
27. Letter from Commissioner Brendan Carr to Alphabet, Meta Platforms, Microsoft, and Apple, Federal Communications Commission, November 13, 2024, https://docs.fcc.gov/public/attachments/DOC-407732A1.pdf (accessed April 9, 2025).
28. Lisa Macpherson, "Public Knowledge Proposes Section 230 Reforms That Address Harms While Protecting Free Expression," Public Knowledge, March 10, 2025, https://publicknowledge.org/public-knowledge-proposes-section-230-reforms-that-address-harms-while-protecting-free-expression/ (accessed April 9, 2025).

Digital Discrimination Provisions of IIJA

Section 60506 of the Infrastructure Investment and Jobs Act of 2021 required the FCC to adopt rules to facilitate equal access to broadband Internet services.[29] In November 2023, the Commission adopted rules for combating digital discrimination, including a disparate impact standard that allows it to address broadband policies that unintentionally result in discriminatory outcomes.[30] The FCC points to the statute's language, such as "prevent" and "eliminate," as evidence of Congress's intent to address structural inequities in broadband access. However, industry groups contend that the statute only permits regulation of intentional discrimination (disparate treatment).[31] They argue that applying civil rights frameworks to routine business decisions, such as pricing and infrastructure investment, exceeds congressional intent and imposes undue burdens on providers.

One major concern is the chilling effect on broadband investment. The FCC's broad enforcement powers under the disparate impact framework expose providers to potential litigation for routine business decisions, such as pricing and infrastructure deployment.[32] This liability burden could deter companies from expanding networks or upgrading infrastructure, particularly in underserved areas where costs are already high. For example, Chairman Carr warned at the time that the rules give the FCC unprecedented control over Internet service decisions, potentially discouraging innovation and market-driven solutions.[33] Additionally, the threat of federal rate regulation raises fears that higher compliance costs will be passed on to consumers, disproportionately affecting low-income households.

The rules also extend disparate impact liability well beyond Internet service providers, including landlords and other entities somehow involved in broadband deployment. This

29. Infrastructure Investment and Jobs Act, H.R. 3684, 117th Congress, 1st Sess. (November 15, 2021).
30. The Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination, *Final Rule,* Federal Communications Commission, GN Docket No. 22-69, 89 Fed. Reg. 4,128 (January 22, 2024).
31. "Statement of NCTA – The Internet & Television Association Regarding the FCC's Digital Discrimination Order," NCTA – The Internet & Television Association, November 15, 2023. https://www.ncta.com/news/statement-of-ncta-the-internet-television-association-regarding-the-fccs-digital-discrimination-order/ (accessed April 9, 2025).
32. Corey Walker, "Broadband Groups Decry Impact of FCC Digital Discrimination Rules on Rural Providers," Broadband Breakfast, March 5, 2024, https://broadbandbreakfast.com/broadband-groups-decry-impact-of-fcc-digital-discrimination-rules-on-rural-providers/ (accessed April 9, 2025).
33. Testimony of Commissioner Brendan Carr, Federal Communications Commission, "The Fiscal Year 2025 Federal Communications Commission Agency Budget," Subcommittee on Communications and Technology, Committee on Energy and Commerce, U.S. House of Representatives, July 9, 2024, https://docs.fcc.gov/public/attachments/DOC-404046A1.pdf (accessed April 9, 2025).

expansion risks exacerbating housing affordability issues by increasing costs for property owners who invest in broadband infrastructure.[34] Smaller housing providers may face financial roadblocks when trying to upgrade facilities with digital access, ultimately reducing broadband choices for residents and driving up rental costs. This regulatory overreach undermines pro-competitive practices such as bulk billing arrangements and managed Wi-Fi systems, further straining housing operations.

Another unintended consequence is the potential disruption of low-cost broadband plans offered by private providers. By prohibiting income-based discrimination, the FCC's rules may inadvertently make such discount programs illegal. This could eliminate affordable options for low-income households and widen the digital divide instead of closing it. Additionally, disparate impact analyses of income-based discrimination claims are prone to false positives due to correlations with unprotected characteristics such as education level or home-computer ownership. This creates large litigation risks that could discourage providers from offering innovative pricing models or services targeting underserved communities.

As previously noted, the *Loper Bright* decision greatly altered the deference afforded to federal agencies on ambiguous statutes. The Eighth Circuit Court of Appeals is currently considering *Minnesota Telecom Alliance v. Federal Communications Commission*, with petitioners invoking both the Supreme Court's *Loper Bright* precedent, which limits agency deference, and the Major Questions Doctrine to challenge the FCC's broad interpretation of its authority.[35] The court's decision, especially if disparate impact enforcement is struck down, is expected later in 2025 and will significantly shape the future of digital equity enforcement and the FCC's regulatory reach.

34. Jericho Casper, "Opening Briefs Challenge FCC's Digital Discrimination Rules in Eighth Circuit Court Case," Broadband Breakfast, April 23, 2024, https://broadbandbreakfast.com/opening-briefs-challenge-federal-digital-discrimination-rules-in-court/ (accessed April 9, 2025).

35. "U.S. Chamber Sues FCC Over Overreaching, Unlawful, and Counterproductive Broadband Rule," U.S. Chamber of Commerce, January 30, 2024, https://www.uschamber.com/technology/broadband/u-s-chamber-sues-fcc-over-overreaching-unlawful-and-counterproductive-broadband-rule (accessed April 9, 2025).

Conclusion

The FCC's efforts to modernize telecommunications through programs such as the USF and initiatives addressing equity are rooted in noble intentions, but have often resulted in inefficiencies, higher costs, and unintended consequences. Likewise, heavy-handed measures such as reinstating net neutrality and unilaterally reinterpreting Section 230 risk manifesting harms to consumers, investment, and innovation.

Thank you for the opportunity to provide these comments to the Commission. We look forward to further participation and stand by to assist the Commission as requested.

Respectfully submitted,

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